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**BEFORE THE
DEPARTMENT OF CONSUMER AFFAIRS
FOR THE BUREAU OF AUTOMOTIVE REPAIR
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

Case No. 79/15-23

**NO BS SMOG TEST ONLY
TAI LE ANH NGUYEN, Owner
135 Keyes Suite 1
San Jose, CA 95112**

DEFAULT DECISION AND ORDER

**Automotive Repair Dealer Registration No.
ARD 269575
Smog Check, Test Only, Station License No.
TC 269575**

[Gov. Code, §11520]

**TAI LE ANH NGUYEN
197 DANZE DR
SAN JOSE, CA 95111**

**Smog Check Technician, Advanced
Emission Specialist, License No. EA 631655
(to be re-designated upon renewal as EO
631655 and/ or EI 631655)**

Respondent.

FINDINGS OF FACT

1. On or about August 26, 2014, Complainant Patrick Dorais, in his official capacity as the Chief of the Bureau of Automotive Repair, Department of Consumer Affairs, filed Accusation No. 79/15-23 against No BS Smog Test Only and Tai Le Anh Nguyen before the Director of Consumer Affairs. (Accusation attached as Exhibit A.)

1 2. On or about June 29, 2012, the Bureau of Automotive Repair (Bureau) issued
2 Automotive Repair Dealer Registration No. ARD 269575 (“ARD Registration”) to Respondent
3 No BS Smog Test Only, Tai Le Anh Nguyen, Owner (“Respondent No BS”). The Automotive
4 Repair Dealer Registration expired on June 30, 2013, and has not been renewed.

5 3. On or about July 6, 2012, the Bureau of Automotive Repair issued Smog Check, Test
6 Only, Station License No. TC 269575 (“Station License”) to Respondent No BS Smog. The
7 Smog Check, Test Only, Station License was due to expire on June 30, 2013, however was
8 suspended January 28, 2013, and has not been renewed.

9 4. On or about January 13, 2010, the Bureau of Automotive Repair issued Advanced
10 Emission Specialist, License Number EA 631655 (“Smog Check Technician License”) to Tai Le
11 Anh Nguyen (“Respondent Nguyen”). Advanced Emission Specialist, License expired on
12 February 28, 2014, and has not been renewed. The advance emission specialist license was
13 suspended on March 6, 2013. If the suspension is lifted and the license is renewed it will be re-
14 designated as EO 631655 and/ or EI 631655.¹

15 5. Section 44072.6 of the Health and Safety Code provides, in pertinent part, that the
16 expiration or suspension of a license by operation of law, or by order or decision of the Director
17 of Consumer Affairs, or a court of law, or the voluntary surrender of the license shall not deprive
18 the Director of jurisdiction to proceed with any investigation of, or action or disciplinary
19 proceedings against the licensee, or to render a decision suspending or revoking the license.

20 6. On or about September 8, 2014, Respondent No BS was served by Certified and First
21 Class Mail copies of the Accusation No. 79/15-23, Statement to Respondent, Notice of Defense,
22 Request for Discovery, and Discovery Statutes (Government Code sections 11507.5, 11507.6,
23 and 11507.7) at Respondent No BS's address of record which, pursuant to Business and
24 Professions Code section 136, is required to be reported and maintained with the Bureau.
25 Respondent's address of record was and is:

26 ¹ Effective August 1, 2012, California Code of Regulations, title 16, sections 3340.28, 3340.29, and 3340.30
27 were amended to implement a license restructure from the Advanced Emission Specialist Technician (EA) license
28 and basic Area (EB) Technician license to Smog Check Inspector (EO) license and/ or Smog Check Repair
Technician (EI) license.

1 135 Keyes Suite 1
San Jose, CA 95112.

2 7. On or about September 25, 2014, Respondent Nguyen was served by Certified and
3 First Class Mail copies of the Accusation No. 79/15-23, Statement to Respondent, Notice of
4 Defense, Request for Discovery, and Discovery Statutes (Government Code sections 11507.5,
5 11507.6, and 11507.7) at Respondent Nguyen's address of record which, pursuant to Business and
6 Professions Code section 136, is required to be reported and maintained with the Bureau.

7 Respondent's address of record was and is:

8 197 Danze Dr.
9 San Jose, CA 95111.

10 8. Service of the Accusation was effective as a matter of law under the provisions of
11 Government Code section 11505, subdivision (c) and/or Business & Professions Code section
12 124.

13 9. Government Code section 11506 states, in pertinent part:

14 (c) The respondent shall be entitled to a hearing on the merits if the respondent
15 files a notice of defense, and the notice shall be deemed a specific denial of all parts
16 of the accusation not expressly admitted. Failure to file a notice of defense shall
constitute a waiver of respondent's right to a hearing, but the agency in its discretion
may nevertheless grant a hearing.

17 10. Respondent No BS failed to file a Notice of Defense within 15 days after service
18 upon him of the Accusation, and therefore waived his right to a hearing on the merits of
19 Accusation No. 79/15-23.

20 11. Respondent Nguyen failed to file a Notice of Defense within 15 days after service
21 upon him of the Accusation, and therefore waived his right to a hearing on the merits of
22 Accusation No. 79/15-23.

23 12. California Government Code section 11520 states, in pertinent part:

24 (a) If the respondent either fails to file a notice of defense or to appear at the
25 hearing, the agency may take action based upon the respondent's express admissions
26 or upon other evidence and affidavits may be used as evidence without any notice to
respondent.

1 supported by the evidence contained in the affidavit of Bureau Representative Joseph Cheung in
2 this case:

3 a. Respondent Nguyen's Smog Check Technician License is subject to disciplinary
4 action under section 44050, subsection (e) of the Health and Safety Code in that Respondent
5 Nguyen failed to comply with a citation and order of abatement. On or about November 20,
6 2012, Respondent was issued Citation No. M2013-0334. The Citation ordered Respondent to
7 attend an 8 hour certified training course. Respondent failed to appeal the citation which became
8 a final order. Respondent failed to take an 8 hour training course.

9 b. Respondent Nguyen's Smog Check Technician License is subject to disciplinary
10 action under section 44045.6 subsection (c) of the Health and Safety Code in conjunction with
11 California Code of Regulations, title 16, section 3340.24, California Code of Regulations, title 16,
12 section 3340.24, and Health and Safety Code section 44072.2 in that Respondent Nguyen failed
13 to complete a training course that was ordered by the Department. On or about November 20,
14 2012, Respondent was issued Citation No. M2013-0334. The Citation ordered Respondent to
15 attend an 8 hour certified training course. Respondent failed to appeal the citation which became
16 a final order. Respondent failed to take an 8 hour training course.

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ORDER

IT IS SO ORDERED that Smog Check, Test Only, Station License No. TC 269575, heretofore issued to Respondent No BS Smog Test Only, Tai Le Anh Nguyen-owner, is revoked.

IT IS SO ORDERED that Advanced Emission Specialist, License Number EA 631655, heretofore issued to Respondent Tai Le Anh Nguyen, is revoked.

Pursuant to Government Code section 11520, subdivision (c), Respondent may serve a written motion requesting that the Decision be vacated and stating the grounds relied on within seven (7) days after service of the Decision on Respondent. The motion should be sent to the Bureau of Automotive Repair, ATTN: William D. Thomas, 10949 North Mather Blvd., Rancho Cordova, CA 95670. The agency in its discretion may vacate the Decision and grant a hearing on a showing of good cause, as defined in the statute.

This Decision shall become effective on February 24, 2015

It is so ORDERED January 5, 2015



TAMARA COLSON
Assistant General Counsel
Department of Consumer Affairs

41113498.DOC
DOJ Matter ID:SF2014409250

Attachment:
Exhibit A: Accusation

Exhibit A

Accusation

1 KAMALA D. HARRIS
Attorney General of California
2 FRANK H. PACOE
Supervising Deputy Attorney General
3 JUSTIN R. SURBER
Deputy Attorney General
4 State Bar No. 226937
455 Golden Gate Avenue, Suite 11000
5 San Francisco, CA 94102-7004
Telephone: (415) 355-5437
6 Facsimile: (415) 703-5480
Attorneys for Complainant

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8 **BEFORE THE**
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9 **FOR THE BUREAU OF AUTOMOTIVE REPAIR**
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12 **NO BS SMOG TEST ONLY**
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ACCUSATION

15 **Automotive Repair Dealer Registration No.**
ARD 269575
16 **Smog Check, Test Only, Station License No.**
TC 269575

17 **TAI LE ANH NGUYEN**
18 **197 DANZE DR**
SAN JOSE, CA 95111

19 **Smog Check Technician, Advanced**
20 **Emission Specialist, License No. EA 631655**
(to be re-designated upon renewal as EO
21 **631655 and/ or EI 631655)**

22 Respondent.

23
24 Complainant alleges:

25 **PARTIES**

26 1. Patrick Dorais (Complainant) brings this Accusation solely in his official capacity as
27 the Chief of the Bureau of Automotive Repair, Department of Consumer Affairs.

1 department shall be a ground for revocation or suspension of a smog check technician's license
2 under Section 44072.2.

3"

4 8. Section 44050, subsection (e), of the Health and Safety Code states:

5 "(e) Failure to comply with an order of abatement or payment of an administrative fine
6 issued by the department pursuant to this section is grounds for suspension or revocation of the
7 license, or placing the licensee on probation."

8 9. Section 44072.2 of the Health and Safety Code states:

9 "The director may suspend, revoke, or take other disciplinary action against a license as
10 provided in this article if the licensee, or any partner, officer, or director thereof, does any of the
11 following:

12

13 "(c) Violates any of the regulations adopted by the director pursuant to this chapter.

14

15 "(h) Violates or attempts to violate the provisions of this chapter relating to the particular
16 activity for which he or she is licensed."

17 10. Section 44072.6 of the Health and Safety Code provides, in pertinent part, that the
18 expiration or suspension of a license by operation of law, or by order or decision of the Director
19 of Consumer Affairs, or a court of law, or the voluntary surrender of the license shall not deprive
20 the Director of jurisdiction to proceed with any investigation of, or action or disciplinary
21 proceedings against the licensee, or to render a decision suspending or revoking the license.

22 11. California Code of Regulations, title 16, section 3340.24, states:

23 "(a) Any disciplinary or reinstatement proceeding under this article involving licensed
24 stations, licensed technicians, or fleet owners licensed pursuant to section 44020 of the Health and
25 Safety Code shall be conducted in accordance with chapter 5 (commencing with section 11500) of
26 division 3, Title 2 of the Government Code.

27 "(b) The bureau may suspend or revoke the license of or pursue other legal action against a
28 licensee, if the licensee knowingly and willfully resists, delays, or obstructs any employee of the

1 bureau or any employee of the quality assurance contractor of the bureau in carrying out the
2 lawful performance of his or her duties.

3 "(c) The bureau may suspend or revoke the license of or pursue other legal action against a
4 licensee, if the licensee falsely or fraudulently issues or obtains a certificate of compliance or a
5 certificate of noncompliance.

6 "(d) The bureau may suspend or revoke the license of or pursue other legal action against a
7 licensee that fails to complete retraining when required by the department, pursuant to section
8 44045.6 of the Health and Safety Code."

9 12. California Code of Regulations, title 16, section 3340.31, states:

10 "(a) Licensed inspectors or repair technicians receiving citations pursuant to subdivision (b)
11 of Section 44050 of the Health and Safety Code, or found lacking in skills pursuant to subdivision
12 (b) of Section 44031.5 of the Health and Safety Code, or found lacking in skills pursuant to
13 subdivision (c) of Section 44045.6 of the Health and Safety Code, shall be required to undergo
14 retraining at institutions and by instructors certified by the bureau pursuant to Sections 44030.5
15 and 44045.6 of the Health and Safety Code.

16 "(b) Failure by a licensed inspector or repair technician to complete retraining when
17 required by the department shall be grounds for revocation or suspension of the license, pursuant
18 to section 44045.6 of the Health and Safety Code."

19 COSTS

20 13. Section 125.3 of the Code provides, in pertinent part, that a Board may request the
21 administrative law judge to direct a licentiate found to have committed a violation or violations of
22 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
23 enforcement of the case.

24 FIRST CAUSE FOR DISCIPLINE

25 (Failure to Comply with Citation)

26 14. Respondent Nguyen's Smog Check Technician License is subject to disciplinary
27 action under section 44050, subsection (e) of the Health and Safety Code in that Respondent
28 Nguyen failed to comply with a citation and order of abatement. On or about November 20,

1 2012, Respondent was issued Citation No. M2013-0334. The Citation ordered Respondent to
2 attend an 8 hour certified training course. Respondent failed to appeal the citation which became
3 a final order. Respondent failed to take an 8 hour training course.

4 **SECOND CAUSE FOR DISCIPLINE**

5 **(Failure to Complete Training)**

6 15. Respondent Nguyen's Smog Check Technician License is subject to disciplinary
7 action under section 44045.6 subsection (c) of the Health and Safety Code in conjunction with
8 California Code of Regulations, title 16, section 3340.24, California Code of Regulations, title 16,
9 section 3340.24, and Health and Safety Code section 44072.2 in that Respondent Nguyen failed to
10 complete a training course that was ordered by the Department. On or about November 20, 2012,
11 Respondent was issued Citation No. M2013-0334. The Citation ordered Respondent to attend an
12 8 hour certified training course. Respondent failed to appeal the citation which became a final
13 order. Respondent failed to take an 8 hour training course.

14 **THIRD CAUSE FOR DISCIPLINE**

15 **(Failure to Comply with Citation)**

16 16. Respondent No BS's Station License is subject to disciplinary action under section
17 44050, subsection (e) of the Health and Safety Code in that Respondent No BS failed to comply
18 with a citation and order of abatement. On or about November 20, 2012, Respondent was issued
19 Citation No. C2013-0335. The Citation ordered Respondent No BS to pay a \$1000 civil penalty.
20 Respondent No BS failed to appeal the citation which became a final order. Respondent No BS
21 failed to pay the \$1000 civil penalty.

22 **PRAYER**

23 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
24 and that following the hearing, the Director of Consumer Affairs issue a decision:

25 1. Revoking or suspending Smog Check. Test Only, Station License Number TC
26 269575, issued to No BS Smog Test Only, Tai Le Anh Nguyen, sole owner;

27 2. Revoking or suspending Advanced Emission Specialist, License Number EA 631655,
28 issued to Tai Le Anh Nguyen;

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3. Ordering Tai Le Anh Nguyen to pay the Bureau of Automotive Repair the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;

4. Taking such other and further action as deemed necessary and proper.

DATED: August 26, 2014



PATRICK DORAIS
Chief
Bureau of Automotive Repair
Department of Consumer Affairs
State of California
Complainant

SF2014409250
41047830.doc

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Attorney General of California
2 FRANK H. PACOE
Supervising Deputy Attorney General
3 JUSTIN R. SURBER
Deputy Attorney General
4 State Bar No. 226937
455 Golden Gate Avenue, Suite 11000
5 San Francisco, CA 94102-7004
Telephone: (415) 355-5437
6 Facsimile: (415) 703-5480
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27 the Chief of the Bureau of Automotive Repair, Department of Consumer Affairs.

1 department shall be a ground for revocation or suspension of a smog check technician's license
2 under Section 44072.2.

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4 8. Section 44050, subsection (e), of the Health and Safety Code states:

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6 issued by the department pursuant to this section is grounds for suspension or revocation of the
7 license, or placing the licensee on probation.”

8 9. Section 44072.2 of the Health and Safety Code states:

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10 provided in this article if the licensee, or any partner, officer, or director thereof, does any of the
11 following:

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13 “(c) Violates any of the regulations adopted by the director pursuant to this chapter.

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16 activity for which he or she is licensed.”

17 10. Section 44072.6 of the Health and Safety Code provides, in pertinent part, that the
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19 of Consumer Affairs, or a court of law, or the voluntary surrender of the license shall not deprive
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22 11. California Code of Regulations, title 16, section 3340.24, states:

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24 stations, licensed technicians, or fleet owners licensed pursuant to section 44020 of the Health and
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26 division 3, Title 2 of the Government Code.

27 “(b) The bureau may suspend or revoke the license of or pursue other legal action against a
28 licensee, if the licensee knowingly and willfully resists, delays, or obstructs any employee of the

1 bureau or any employee of the quality assurance contractor of the bureau in carrying out the
2 lawful performance of his or her duties.

3 "(c) The bureau may suspend or revoke the license of or pursue other legal action against a
4 licensee, if the licensee falsely or fraudulently issues or obtains a certificate of compliance or a
5 certificate of noncompliance.

6 "(d) The bureau may suspend or revoke the license of or pursue other legal action against a
7 licensee that fails to complete retraining when required by the department, pursuant to section
8 44045.6 of the Health and Safety Code."

9 12. California Code of Regulations, title 16, section 3340.31, states:

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11 of Section 44050 of the Health and Safety Code, or found lacking in skills pursuant to subdivision
12 (b) of Section 44031.5 of the Health and Safety Code, or found lacking in skills pursuant to
13 subdivision (c) of Section 44045.6 of the Health and Safety Code, shall be required to undergo
14 retraining at institutions and by instructors certified by the bureau pursuant to Sections 44030.5
15 and 44045.6 of the Health and Safety Code.

16 "(b) Failure by a licensed inspector or repair technician to complete retraining when
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5 **(Failure to Complete Training)**

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12 8 hour certified training course. Respondent failed to appeal the citation which became a final
13 order. Respondent failed to take an 8 hour training course.

14 **THIRD CAUSE FOR DISCIPLINE**

15 **(Failure to Comply with Citation)**

16 16. Respondent No BS's Station License is subject to disciplinary action under section
17 44050, subsection (e) of the Health and Safety Code in that Respondent No BS failed to comply
18 with a citation and order of abatement. On or about November 20, 2012, Respondent was issued
19 Citation No. C2013-0335. The Citation ordered Respondent No BS to pay a \$1000 civil penalty.
20 Respondent No BS failed to appeal the citation which became a final order. Respondent No BS
21 failed to pay the \$1000 civil penalty.

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23 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
24 and that following the hearing, the Director of Consumer Affairs issue a decision:

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3. Ordering Tai Le Anh Nguyen to pay the Bureau of Automotive Repair the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;

4. Taking such other and further action as deemed necessary and proper.

DATED: August 26, 2014



PATRICK DORAIS
Chief
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